

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,
Plaintiff/respondent
v.
Antwan Fortenberry,
Defendant/petitioner

2:14-cr-00387-JAD-NJK

Order re: ECF Nos. 130, 131

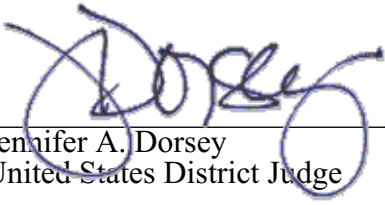
Federal prison inmate Antwan Fortenberry brings this § 2255 petition to challenge his 2015 federal conviction and sentence for being a felon in possession of a firearm.¹ On remand from the Ninth Circuit, I found that Fortenberry had alleged a colorable ineffective-assistance-of-counsel (“IAC”) claim based on his counsel’s failure to file a notice of appeal. I therefore directed the government to notify the court by March 1, 2017, if it objects to the court vacating and reentering Fortenberry’s judgment so that he may file a timely notice of appeal without the court first having to hold an evidentiary hearing to determine whether Fortenberry’s IAC allegation is true.² That deadline has expired, and the government has not filed an objection or otherwise responded to my order. I therefore assume without deciding that Fortenberry’s IAC claim is true and vacate and reenter the judgment so that Fortenberry’s appeal may proceed. Accordingly,

IT IS HEREBY ORDERED that the Clerk of Court is directed to **re-file Fortenberry’s judgment of conviction [ECF No. 121]** so that Fortenberry may take this opportunity to file a timely notice of appeal in the district court. Fortenberry is cautioned that, under Federal Rule of Appellate Procedure 4(b)(1)(A) he has 14 days after the re-entry of the judgment to file his notice of appeal. Fortenberry should carefully review Rule 4(b) and (c) of the Federal Rules of Appellate Procedure and remains responsible for ensuring the timeliness of his appeal.

¹ ECF No. 124.

² ECF No. 131.

1 Dated this 6th day of March, 2017.

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4 Jennifer A. Dorsey
5 United States District Judge
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